

# SENATE BILL No. 493

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-14-1.5-6.1; IC 8-1.

**Synopsis:** IURC communications and deliberations. Amends the open door law to permit the utility regulatory commission (IURC) to deliberate rate cases in executive session. Prohibits a commissioner, an administrative law judge, or an employee or agent of the IURC who is assigned to a proceeding from communicating with a party to the proceeding unless the party files a notice of the communication with the IURC. Allows the IURC to add to the value of an energy utility's property for ratemaking purposes the value of certain qualified property constructed by the utility to comply with state or federal mandates. Allows an energy utility to recover through a retail rate adjustment mechanism governmentally mandated costs incurred in providing retail energy service. Provides that a petition by a public or municipally owned electric utility or a rural electric membership corporation (REMC) for a fuel cost charge includes the costs of purchased electricity. Allows a public utility providing electric or gas service or an REMC to implement rates proposed by the utility in a petition for a change in its basic rates if the IURC fails to issue an order on the petition within nine months for a public utility or within six months for an REMC. Requires the utility or REMC to refund to customers any difference between the rate implemented and the higher of the rate: (1) finally approved; or (2) previously in effect. Provides that a merger, consolidation, reorganization, or stock transaction involving an energy company may not occur without IURC approval if the transaction will cause more than 51% of the company's voting stock to be held by different interests. Requires the IURC to approve the transaction unless after the transaction the utility will lack the capability to provide

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**Effective:** Upon passage; July 1, 2002.

## Server

January 14, 2002, read first time and referred to Committee on Rules and Legislative Procedure.



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adequate and reliable service. Allows the IURC to impose a civil penalty of up to \$5,000 if a public utility or an REMC violates any utility law or fails to comply with: (1) a standard of service established by IURC rule; or (2) a rate or service requirement of an IURC order. Allows the IURC to impose an additional penalty of up to \$10,000 if the violation or failure demonstrates a disregard by the public utility or REMC of its duty to remedy the violation or failure. Specifies that a suit to recover a penalty imposed by the IURC shall be brought by the attorney general. Provides that merchant power plants are subject to the jurisdiction of the IURC. Requires the IURC to notify the local zoning authority of a petition for approval of a merchant power plant. Requires the IURC to consider any land use plan or other information provided by the zoning authority.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## SENATE BILL No. 493

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 5-14-1.5-6.1, AS AMENDED BY P.L.37-2000,  
2       SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2002]: Sec. 6.1. (a) As used in this section, "public official"  
4       means a person:  
5               (1) who is a member of a governing body of a public agency; or  
6               (2) whose tenure and compensation are fixed by law and who  
7               executes an oath.  
8       (b) Executive sessions may be held only in the following instances:  
9               (1) Where authorized by federal or state statute.  
10              (2) For discussion of strategy with respect to any of the following:  
11                  (A) Collective bargaining.  
12                  (B) Initiation of litigation or litigation that is either pending or  
13                  has been threatened specifically in writing.  
14                  (C) The implementation of security systems.  
15                  (D) The purchase or lease of real property by the governing



- 1 body up to the time a contract or option to purchase or lease is  
 2 executed by the parties.
- 3 However, all such strategy discussions must be necessary for  
 4 competitive or bargaining reasons and may not include  
 5 competitive or bargaining adversaries.
- 6 (3) For discussion of the assessment, design, and implementation  
 7 of school safety and security measures, plans, and systems.
- 8 (4) Interviews with industrial or commercial prospects or agents  
 9 of industrial or commercial prospects by the department of  
 10 commerce, the Indiana development finance authority, the  
 11 **Indiana** film commission, the Indiana business modernization  
 12 and technology corporation, or economic development  
 13 commissions.
- 14 (5) To receive information about and interview prospective  
 15 employees.
- 16 (6) With respect to any individual over whom the governing body  
 17 has jurisdiction:
- 18 (A) to receive information concerning the individual's alleged  
 19 misconduct; and
- 20 (B) to discuss, before a determination, the individual's status  
 21 as an employee, a student, or an independent contractor who  
 22 is a physician.
- 23 (7) For discussion of records classified as confidential by state or  
 24 federal statute.
- 25 (8) To discuss before a placement decision an individual student's  
 26 abilities, past performance, behavior, and needs.
- 27 (9) To discuss a job performance evaluation of individual  
 28 employees. This subdivision does not apply to a discussion of the  
 29 salary, compensation, or benefits of employees during a budget  
 30 process.
- 31 (10) When considering the appointment of a public official, to do  
 32 the following:
- 33 (A) Develop a list of prospective appointees.
- 34 (B) Consider applications.
- 35 (C) Make one (1) initial exclusion of prospective appointees  
 36 from further consideration.
- 37 Notwithstanding IC 5-14-3-4(b)(12), a governing body may  
 38 release and shall make available for inspection and copying in  
 39 accordance with IC 5-14-3-3 identifying information concerning  
 40 prospective appointees not initially excluded from further  
 41 consideration. An initial exclusion of prospective appointees from  
 42 further consideration may not reduce the number of prospective

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1 appointees to fewer than three (3) unless there are fewer than  
2 three (3) prospective appointees.

3 Interviews of prospective appointees must be conducted at a  
4 meeting that is open to the public.

5 (11) To train school board members with an outside consultant  
6 about the performance of the role of the members as public  
7 officials.

8 (12) To prepare or score examinations used in issuing licenses,  
9 certificates, permits, or registrations under IC 15-5-1.1 or IC 25.

10 **(13) To discuss a public utility rate case.**

11 (c) A final action must be taken at a meeting open to the public.

12 (d) Public notice of executive sessions must state the subject matter  
13 by specific reference to the enumerated instance or instances for which  
14 executive sessions may be held under subsection (b). The requirements  
15 stated in section 4 of this chapter for memoranda and minutes being  
16 made available to the public is modified as to executive sessions in that  
17 the memoranda and minutes must identify the subject matter  
18 considered by specific reference to the enumerated instance or  
19 instances for which public notice was given. The governing body shall  
20 certify by a statement in the memoranda and minutes of the governing  
21 body that no subject matter was discussed in the executive session  
22 other than the subject matter specified in the public notice.

23 (e) A governing body may not conduct an executive session during  
24 a meeting, except as otherwise permitted by applicable statute. A  
25 meeting may not be recessed and reconvened with the intent of  
26 circumventing this subsection.

27 SECTION 2. IC 8-1-1-5 IS AMENDED TO READ AS FOLLOWS  
28 [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) The commission shall in all  
29 controversial proceedings heard by it be an impartial factfinding body  
30 and shall make its orders in such cases upon the facts impartially found  
31 by it. The commission shall in no such proceeding, during the hearing,  
32 act in the role either of a proponent or opponent on any issue to be  
33 decided by it. All evidence given in any such proceeding shall be  
34 offered on behalf of the respective parties to, or appearing in, the  
35 proceeding and not in the name or behalf of the commission itself.

36 (b) Any report, audit, examination, or analysis prepared by the  
37 commission staff **or an agent of the commission** at the request or  
38 direction of the commission may be made a part of the record of the  
39 proceeding, subject to cross-examination by any party of the person  
40 who performed or directed the preparation of the report, audit,  
41 examination or analysis. **Any report, audit, examination, analysis, or**  
42 **recommendation that:**

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(1) is prepared by the commission staff or an agent of the commission and communicated to the commission or an administrative law judge;

(2) concerns an issue of fact or law in an adjudicatory proceeding; and

(3) is not made part of the record of the proceeding;

must be served by the commission or an administrative law judge on all parties to the proceeding not less than ten (10) days before a final order is issued in the proceeding.

(c) If in any such proceeding the public interest is not otherwise adequately represented by counsel, in the opinion of the commission, it shall be the duty of the utility consumer counselor, if requested by the commission, to make adequate preparation for the presentation of the interests of the public in such proceeding and ~~he~~ **the utility consumer counselor** shall at the hearing represent the public interests therein involved.

(d) However, nothing in this section prevents the commission from instituting, prosecuting, hearing, or determining any investigation or proceeding which it is authorized to do, or make, on its own motion by any law with the administration of which it is charged.

(e) ~~Except as otherwise provided in this chapter, no member or A commissioner, an administrative law judge, a staff employee of the commission, or an agent of the commission assigned to make findings of fact and conclusions of law in a formally docketed evidentiary proceeding may not communicate in connection with any issue of fact, or law, or policy disputed in that proceeding with any party or his a party's representative except on notice and with opportunity for all parties to participate. unless the party agrees to report the communication in the manner provided in this subsection, and regardless of whether the communication is initiated by the party or the party's representative or by the commissioner, administrative law judge, staff employee, or agent. A party shall report a communication described in this subsection not later than three (3) working days after the date on which the communication occurs by submitting a notice of ex parte communication to the administrative law judge or commissioner assigned to the proceeding and to the secretary of the commission for inclusion in the public record. A notice provided under this subsection must include the following information:~~

(1) The date, time, and location of the communication and whether it was oral, written, or oral and written.

(2) The identity of:

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- (A) all participants in the communication;
  - (B) the person initiating the communication; and
  - (C) any other persons present during the communication.
- (3) A description of the communication and a summary of the content of the communication.

The party shall attach to the notice required under this subsection a copy of any written material or text used during the communication.

(f) A person who violates this section ~~commits a Class C infraction.~~ is subject to sanctions, disciplinary action, or other remedial action as follows:

(1) If the person is a party to a proceeding under this section and the person:

(A) directly or indirectly violates or causes the violation of this section; or

(B) fails to report to the commission the facts and circumstances concerning any violation of this section; the person, after notice and hearing, may be disqualified by the commission from further participation in the proceeding. In a proceeding other than a rulemaking proceeding, the commission may require the person to show cause why the person's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected. In any proceeding, the commission may impose any alternative or additional sanctions upon the person as the commission considers appropriate.

(2) If the person is a staff employee or an agent of the commission, the person is subject to any disciplinary or other remedial action that the commission considers appropriate.

(3) For all other persons, the commission may impose any sanctions or other remedial actions that the commission considers appropriate under the circumstances of the violation.

SECTION 3. IC 8-1-2-6.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.6. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur, mercury, or nitrogen based pollutants associated with combustion or use of coal; and

(2) that either:

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(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

"Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tippie.

(b) As used in this section, "qualified pollution control property" means: ~~an~~

(1) any:

(A) air, wastewater, solid waste, or thermal pollution treatment, storage, or disposal system or pollution control device ~~on~~ necessary to operate a coal burning electric generating facility; or ~~any~~

(B) equipment that constitutes clean coal technology; that has been approved for use by the commission, that meets applicable state or federal requirements, and that is designed to accommodate the burning of coal from the geological formation known as the Illinois Basin; or

(2) any air, wastewater, solid waste, or thermal pollution treatment, storage, or disposal system or pollution control device or monitoring device, if the treatment, storage, or disposal system, pollution control device, or monitoring device:

(A) is used for any plant, equipment, or facility used or to be used for the production, transmission, delivery, or furnishing of heat, light, or power;

(B) is approved for use by the commission; and

(C) meets applicable state or federal requirements.

(c) As used in this section, "qualified property" means any:

(1) qualified pollution control property; or

(2) qualified utility system property.

(d) As used in this section, "qualified utility system property" means any plant, equipment, or facility that is used or to be used on a utility system and that is required to meet:

(1) applicable state or federal requirements for the security, reliability, or safety of all or any part of the utility system; or

(2) applicable state or federal requirements of any:

(A) regional transmission organization (as defined in

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1           18 CFR 35.34); or  
 2           (B) utility industry reliability organization;  
 3           having the authority under state or federal requirements, or  
 4           contract, or otherwise to set requirements for all or any part  
 5           of the utility system.

6           (e) As used in this section, "state or federal requirements"  
 7           includes any requirement of:

- 8           (1) any state or federal law, rule, regulation, or order; or  
 9           (2) any adjudication, settlement, or consent decree in any  
 10          federal or state court or administrative proceeding  
 11          interpreting or applying a state or federal law, rule,  
 12          regulation, or order.

13          (f) As used in this section, "utility" refers to any electric generating  
 14          an energy utility allowed by law to earn a return on its investment. (as  
 15          defined in IC 8-1-2.5-2).

16          (g) As used in this section, "utility system" means a system used  
 17          by a utility in whole or in part for the:

- 18          (1) production;  
 19          (2) transmission;  
 20          (3) distribution; or  
 21          (4) any combination of subdivisions (1) through (3);  
 22          of heat, light, or power to provide retail energy service (as defined  
 23          in IC 8-1-2.5-3), regardless of whether the service is provided  
 24          under IC 8-1-2.5 or another provision of this article.

25          ~~(b)~~ (h) Upon the request of a utility that began construction after  
 26          October 1, 1985, of qualified ~~pollution control~~ property that is to be  
 27          used and useful for the public convenience, the commission shall for  
 28          ratemaking purposes add to the value of that utility's property the value  
 29          of the qualified ~~pollution control~~ property under construction. ~~but only~~  
 30          if at the time of the application and thereafter:

- 31          ~~(1)~~ the facility burns only Indiana coal as its primary fuel source  
 32          once the air pollution control device is fully operational; or  
 33          ~~(2)~~ the utility can prove to the commission that the utility is  
 34          justified because of economic considerations or governmental  
 35          requirements in utilizing some non-Indiana coal.

36          ~~(c)~~ (i) The commission shall adopt rules under IC 4-22-2 to  
 37          implement this section.

38          SECTION 4. IC 8-1-2-6.8 IS ADDED TO THE INDIANA CODE  
 39          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 40          UPON PASSAGE]: Sec. 6.8. (a) As used in this section,  
 41          "governmentally mandated costs" include:

- 42          (1) capital, operating, maintenance, depreciation, and tax



costs, together with carrying costs, of or for qualified property, or resulting from complying with:

(A) state or federal environmental compliance requirements;

(B) state or federal requirements for the security, reliability, or safety of all or any part of a utility system; or

(C) the requirements of any regional transmission organization (as defined in 18 CFR 35.34) or utility industry reliability organization;

(2) costs of emission allowances purchased and used by a utility to cause its utility system to meet applicable state or federal requirements for clean air, together with carrying costs; and

(3) costs of decommissioning an electric generating facility resulting from applicable state or federal requirements for the decommissioning of the facility, together with carrying costs.

(b) As used in this section, "qualified property" has the meaning set forth in section 6.6 of this chapter.

(c) As used in this section, "relevant date" means the later of:

(1) January 1, 2001; or

(2) the effective date of the most recent commission order establishing a utility's basic rates and charges for retail energy service.

(d) As used in this section, "retail energy service" has the meaning set forth in IC 8-1-2.5-3, regardless of whether the service is provided under IC 8-1-2.5 or another provision of this article.

(e) As used in this section, "retail rate adjustment mechanism" means a:

(1) tracking provision;

(2) surcharge provision; or

(3) similar mechanism or provision;

approved by the commission to periodically adjust a utility's rates and charges for retail energy services to allow for the recovery of certain costs.

(f) As used in this section, "state or federal requirements" has the meaning set forth in section 6.6 of this chapter.

(g) As used in this section, "utility" has the meaning set forth in section 6.6 of this chapter.

(h) As used in this section, "utility system" has the meaning set forth in section 6.6 of this chapter.

(i) Upon the request of a utility, the commission shall allow the utility to recover through a retail rate adjustment mechanism,

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without any deferral or offset, the governmentally mandated costs the utility reasonably incurs to provide retail energy service after the relevant date.

(j) A retail rate adjustment mechanism proposed by a utility under this section may be based on actual or forecasted data. If forecasted data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct any variance between the utility's forecasted costs and the utility's actual costs in providing retail energy service. The commission must approve a retail rate adjustment mechanism that complies with this section.

(k) A retail rate adjustment resulting from a retail rate adjustment mechanism approved by the commission under this section:

(1) is in addition to any other rate adjustment a utility may be entitled to under this title; and

(2) is not considered a general increase in basic rates and charges under section 42(c) of this chapter or under IC 8-1-13-30(c).

(l) The commission shall make any adjustments to a utility's expense tests and return tests during the twelve (12) month test period considered by the commission in an application under section 42(f)(3) or 42(i)(3)(c) of this chapter or under IC 8-1-13-30(f), whichever applies, necessary to permit the utility to retain the revenues resulting from a retail rate adjustment mechanism approved by the commission under this section.

SECTION 5. IC 8-1-2-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 42. (a) No change shall be made in any schedule, including schedules of joint rates, except upon thirty (30) days notice to the commission, and approval by the commission, and all such changes shall be plainly indicated upon existing schedules or by filing new schedules in lieu thereof thirty (30) days prior to the time the same are to take effect. The commission may prescribe a shorter time within which a change may be made. A public or municipally owned or cooperatively owned utility may not file a request for a general increase in its basic rates and charges within fifteen (15) months after the filing date of its most recent request for a general increase in its basic rates and charges, except that the commission may order a more timely increase if:

(1) the requested increase relates to a different type of utility service;

(2) the commission finds that the utility's financial integrity or service reliability is threatened; or



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1 (3) the increase is based on:

2 (A) a rate structure previously approved by the commission; or

3 (B) orders of federal courts or federal regulatory agencies  
4 having jurisdiction over the utility.

5 The phrase "general increase in basic rates and charges" does not  
6 include changes in rates related solely to the cost of fuel or to the cost  
7 of purchased gas or purchased electricity or adjustments in accordance  
8 with tracking provisions approved by the commission.

9 (b) No schedule of rates, tolls, and charges of a public **or**  
10 municipally owned ~~or cooperatively owned~~ utility which includes or  
11 authorizes any changes in charges based upon costs is effective without  
12 the approval of the commission. Before the commission approves any  
13 changes in the schedule of rates, tolls, and charges of an electric utility,  
14 which generates and sells electricity, based upon the cost of fuel to  
15 generate electricity or upon ~~the cost of fuel included in~~ the cost of  
16 purchased electricity, the utility consumer counselor shall examine the  
17 books and records of the public **or** municipally owned ~~or cooperatively~~  
18 ~~owned~~ generating utility to determine the cost of fuel **and the cost of**  
19 **purchased electricity** upon which the proposed charges are based. In  
20 addition, before such a fuel **and purchased electricity** cost charge  
21 becomes effective, the commission shall hold a summary hearing on  
22 the sole issue of the fuel **and purchased electricity** charge. The utility  
23 consumer counselor shall conduct ~~his~~ **the utility consumer**  
24 **counselor's** review and make a report to the commission within twenty  
25 (20) days after the utility's request for the fuel **and purchased**  
26 **electricity** cost charge is filed. The commission shall hold the summary  
27 hearing and issue its order within twenty (20) days after it receives the  
28 utility consumer counselor's report. The provisions of this section and  
29 sections 39, 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning  
30 the filing, printing, and changing of rate schedules and the time  
31 required for giving notice of hearing and requiring publication of notice  
32 do not apply to such a fuel **and purchased electricity** cost charge or  
33 such a summary hearing.

34 (c) Regardless of the pendency of any request for a fuel **and**  
35 **purchased electricity** cost charge by any electric utility, the books and  
36 records pertaining to the cost of fuel **and the cost of purchased**  
37 **electricity** of all public **or** municipally owned ~~or cooperatively owned~~  
38 utilities that generate electricity shall be examined by the utility  
39 consumer counselor not less often than quarterly, and the books and  
40 records of all electric nongenerating public **or** municipally owned **or**  
41 ~~cooperatively owned~~ utilities shall be examined by the utility consumer  
42 counselor not less often than annually. The utility consumer counselor

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1 shall provide the commission with a report as to the examination of  
 2 said books and records within a reasonable time following said  
 3 examination. The utility consumer counselor may, if appropriate,  
 4 request of the commission a reduction or elimination of the fuel **and**  
 5 **purchased electricity** cost charge. Upon such request, the commission  
 6 shall hold a hearing forthwith in the manner provided in sections 58,  
 7 59, and 60 of this chapter.

8 (d) An electric generating utility may apply for a change in its fuel  
 9 **and purchased electricity** charge not more often than each three (3)  
 10 months. When such application is filed the petitioning utility shall  
 11 show to the commission its cost of fuel to generate electricity and ~~the~~  
 12 ~~cost of fuel included in~~ the cost of purchased electricity, for the period  
 13 between its last order from the commission approving fuel **and**  
 14 **purchased electricity** costs in its basic rates and the latest month for  
 15 which actual fuel **and purchased electricity** costs are available. The  
 16 petitioning utility shall also estimate its average fuel **and purchased**  
 17 **electricity** costs for the three (3) calendar months subsequent to the  
 18 expiration of the twenty (20) day period allowed the commission in  
 19 subsection (b). The commission shall conduct a formal hearing solely  
 20 on the fuel **and purchased electricity** cost charge requested in the  
 21 petition subject to the notice requirements of IC 8-1-1-8 and shall grant  
 22 the electric utility the **fuel cost part of the** requested fuel **and**  
 23 **purchased electricity** cost charge or **the purchased electricity cost**  
 24 **part of the requested fuel and purchased electricity cost charge, or**  
 25 **both**, if it finds that:

26 (1) **with respect to the:**

27 (A) **fuel cost part of the requested fuel and purchased**  
 28 **electricity cost charge**, the electric utility has made every  
 29 reasonable effort to acquire fuel and generate ~~or purchase~~  
 30 power ~~or both~~ so as to provide electricity to its retail customers  
 31 at the lowest fuel cost reasonably possible; **and**

32 (B) **purchased electricity part of the requested fuel and**  
 33 **purchased electricity cost charge, the electric utility's costs**  
 34 **of purchased electricity were reasonably incurred by the**  
 35 **electric utility to provide adequate and reliable electric**  
 36 **service, including the maintenance of an adequate level of**  
 37 **electricity reserves;**

38 (2) the actual increases in fuel cost through the latest month for  
 39 which actual fuel costs are available since the last order of the  
 40 commission approving basic rates and charges of the electric  
 41 utility have not been offset by actual decreases in other operating  
 42 expenses;



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(3) the fuel **and purchased electricity** adjustment charge applied for will not result in the electric utility earning a return in excess of the return authorized by the commission in the last proceeding in which the basic rates and charges of the electric utility were approved. However, subject to section 42.3 of this chapter, if the fuel **and purchased electricity** charge applied for will result in the electric utility earning a return in excess of the return authorized by the commission, in the last proceeding in which basic rates and charges of the electric utility were approved, the fuel **and purchased electricity** charge applied for will be reduced to the point where no such excess of return will be earned; and  
 (4) the utility's estimate of its prospective average fuel **and purchased electricity** costs for each such three (3) calendar months are reasonable after taking into consideration:

(A) the actual fuel **and purchased electricity** costs experienced by the utility during the latest three (3) calendar months for which actual fuel **and purchased electricity** costs are available; and

(B) the estimated fuel **and purchased electricity** costs for the same latest three (3) calendar months for which actual fuel **and purchased electricity** costs are available.

(e) Should the commission at any time determine that an emergency exists that could result in an abnormal change in fuel costs, it may, in order to protect the public from the adverse effects of such change suspend the provisions of subsection (d) as to the utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(f) Any change in the fuel **and purchased electricity** cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a reasonable reference therein that such charge is applicable to all of its filed rate schedules.

(g) No schedule of rates, tolls, and charges of a public **or** municipally owned ~~or cooperatively owned~~ gas utility that includes or authorizes any changes in charges based upon gas costs is effective without the approval of the commission except those rates, tolls, and charges contained in schedules that contain specific provisions for

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1 changes in gas costs or the cost of gas that have previously been  
 2 approved by the commission. Gas costs or cost of gas may include the  
 3 gas utility's costs for gas purchased by it from pipeline suppliers, costs  
 4 incurred for leased gas storage and related transportation, costs for  
 5 supplemental and substitute gas supplies, costs incurred for exploration  
 6 and development of its own sources of gas supplies, and other expenses  
 7 relating to gas costs as shall be approved by the commission. Changes  
 8 in a gas utility's rates, tolls, and charges based upon changes in its gas  
 9 costs shall be made in accordance with the following provisions:

10 (1) Before the commission approves any changes in the schedule  
 11 of rates, tolls, and charges of a gas utility based upon the cost of  
 12 the gas, the utility consumer counselor may examine the books  
 13 and records of the public ~~or municipally owned or cooperatively~~  
 14 ~~owned~~ gas utility to determine the cost of gas upon which the  
 15 proposed changes are based. In addition, before such an  
 16 adjustment to the gas cost charge becomes effective, the  
 17 commission shall hold a summary hearing on the sole issue of the  
 18 gas cost adjustment. The utility consumer counselor shall conduct  
 19 ~~his~~ **the utility consumer counselor's** review and make a report  
 20 to the commission within thirty (30) days after the utility's request  
 21 for the gas cost adjustment is filed. The commission shall hold the  
 22 summary hearing and issue its order within thirty (30) days after  
 23 it receives the utility consumer counselor's report. The provisions  
 24 of this section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of  
 25 this chapter concerning the filing, printing, and changing of rate  
 26 schedules and the time required for giving notice of hearing and  
 27 requiring publication of notice do not apply to such a gas cost  
 28 adjustment or such a summary hearing.

29 (2) Regardless of the pendency of any request for a gas cost  
 30 adjustment by any gas utility, the books and records pertaining to  
 31 cost of gas of all public ~~or municipally owned or cooperatively~~  
 32 ~~owned~~ gas utilities shall be examined by the utility consumer  
 33 counselor not less often than annually. The utility consumer  
 34 counselor shall provide the commission with a report as to the  
 35 examination of said books and records within a reasonable time  
 36 following said examination. The utility consumer counselor may,  
 37 if appropriate, request of the commission a reduction or  
 38 elimination of the gas cost adjustment. Upon such request, the  
 39 commission shall hold a hearing forthwith in the manner provided  
 40 in sections 58, 59, and 60 of this chapter.

41 (3) A gas utility may apply for a change in its gas cost charge not  
 42 more often than each three (3) months. When such application is

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1 filed, the petitioning utility shall show to the commission its cost  
 2 of gas for the period between its last order from the commission  
 3 approving gas costs in its basic rates and the latest month for  
 4 which actual gas costs are available. The petitioning utility shall  
 5 also estimate its average gas costs for a recovery period of not less  
 6 than the three (3) calendar months subsequent to the expiration of  
 7 the thirty (30) day period allowed the commission in subdivision  
 8 (1). The commission shall conduct a summary hearing solely on  
 9 the gas cost adjustment requested in the petition subject to the  
 10 notice requirements of IC 8-1-1-8 and may grant the gas utility the  
 11 requested gas cost charge if it finds that:

12 (A) the gas utility has made every reasonable effort to acquire  
 13 long term gas supplies so as to provide gas to its retail  
 14 customers at the lowest gas cost reasonably possible;

15 **(B) if the gas utility's petition is based in whole or in part**  
 16 **on the gas utility's costs for gas services purchased by the**  
 17 **gas utility from pipeline suppliers,** the pipeline supplier or  
 18 suppliers of the gas utility has requested or has filed for a  
 19 change in the costs of gas **services** pursuant to the jurisdiction  
 20 and procedures of a duly constituted regulatory authority;

21 (C) the gas cost adjustment applied for will not result, in the  
 22 case of a public utility, in its earning a return in excess of the  
 23 return authorized by the commission in the last proceeding in  
 24 which the basic rates and charges of the public utility were  
 25 approved; however, subject to section 42.3 of this chapter, if  
 26 the gas cost adjustment applied for will result in the public  
 27 utility earning a return in excess of the return authorized by the  
 28 commission in the last proceeding in which basic rates and  
 29 charges of the gas utility were approved, the gas cost  
 30 adjustment applied for will be reduced to the point where no  
 31 such excess of return will be earned; and

32 (D) the utility's estimate of its prospective average gas costs  
 33 for each such future recovery period is reasonable and gives  
 34 effect to:

35 (i) the actual gas costs experienced by the utility during the  
 36 latest recovery period for which actual gas costs are  
 37 available; and

38 (ii) the actual gas costs recovered by the adjustment of the  
 39 same recovery period.

40 (4) Should the commission at any time determine that an  
 41 emergency exists that could result in an abnormal change in gas  
 42 costs, it may, in order to protect the public or the utility from the

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adverse effects of such change suspend the provisions of subdivision (3) as to the utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(5) Any change in the gas cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a reasonable reference therein that such charge is applicable to all of its filed rate schedules.

**(h) As used in this section, "cost of fuel" or "fuel costs" includes the cost of fuel used by an electric utility to generate electricity.**

**(i) As used in this section, "cost of purchased electricity" or "purchased electricity costs" includes an electric utility's costs directly associated with purchased electricity transactions, including demand charges, capacity charges, reservation charges, option payments, energy charges, take or pay charges, indexed charges, transmission costs, and costs associated with managing the risks of the wholesale power market.**

SECTION 6. IC 8-1-2-61 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 61. (a) Any public utility may make complaint as to any matter affecting its own rates or service. The petition or complaint must include a statement as to whether the utility, if a not-for-profit water utility or municipal utility, has any outstanding indebtedness to the federal government. The public utility shall publish a notice of the filing of such petition or complaint in a newspaper of general circulation published in any county in which the public utility renders service. An order affecting rates or service may be entered by the commission without a formal public hearing, if:

(1) the utility is a not-for-profit water utility or a municipal utility; and

(2) the utility has obtained written consent to obtain an order affecting its rates from the commission without a formal hearing from any agency of the federal government with which the utility has outstanding evidence of indebtedness to the federal government.

The commission may, however, on its own motion require a formal public hearing, and shall, upon a motion filed by the utility consumer

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counselor, by any public or municipal corporation, or by ten (10) individuals, firms, corporations, limited liability companies, or associations, or ten (10) complainants of all or any of these classes, hold a formal public hearing with respect to any such petition or complaint.

(b) In any general rate proceeding under subsection (a) which requires a public hearing and in which an increase in revenues is sought which exceeds the sum of two million five hundred thousand dollars (\$2,500,000), the commission shall conduct at least one (1) public hearing in the largest municipality located within such utility's service area.

(c) As used in this subsection, "public utility" includes a department of public utilities created under IC 8-1-11.1. If the commission fails to issue an order making a determination on a request by a public utility for an increase in the public utility's basic rates and charges for electric or gas service within nine (9) months after the filing of the public utility's case in chief, the public utility may implement the public utility's proposed rate changes beginning on the first day of the first billing month following the expiration of the nine (9) month period allowed the commission under this subsection by filing notice with the commission. After the commission issues an order making a determination on the public's utility's request, the public utility may continue to collect the rates implemented by the public utility under this subsection pending a petition for rehearing or an appeal of the commission's order under IC 8-1-3. Notwithstanding any other provision of this article, upon the final determination on the public utility's request, including the determination on any petition for rehearing or appeal under IC 8-1-3, the public utility shall refund any difference between:

(1) the revenues generated by the rates implemented by the public utility under this subsection; and

(2) the revenues that would have been generated by the higher of:

(A) the rates authorized in the final determination on the proceedings; or

(B) the rates of the public utility that were in effect immediately before the rates implemented by the public utility under this subsection;

for the period beginning on the effective date of the rates implemented by the public utility under this subsection and ending on the effective date of the rates authorized in the final

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determination on the proceedings. The public utility shall issue any refunds required under this subsection not later than sixty (60) days after the effective date of the rates authorized in the final determination on the proceedings. The refunds must include interest accrued from the date of the final determination at the interest rate set forth in IC 24-4.6-1-102.

SECTION 7. IC 8-1-2-84.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 84.1. (a) Notwithstanding sections 83 and 84 of this chapter, this section applies to a transaction involving a:

(1) merger, consolidation, reorganization, or union involving an energy company; or

(2) tender offer or contract for the purchase, acquisition, assignment, or transfer of stock of an energy company.

(b) As used in this section, "energy company" means an energy utility or an energy utility holding company.

(c) As used in this section, "energy utility" means an energy utility (as defined in IC 8-1-2.5-2) that provides retail energy service to more than forty thousand (40,000) retail electric or gas customers in Indiana.

(d) As used in this section, "energy utility holding company" means a corporation, company, partnership, or limited liability company that wholly owns an energy utility.

(e) As used in this section, "person" means an individual, a corporation, a partnership, a limited liability company, an association, or another entity organized under the laws of any state. The term includes state, local, and federal agencies.

(f) As used in this section, "retail energy service" has the meaning set forth in IC 8-1-2.5-3, regardless of whether the service is provided under IC 8-1-2.5 or another provision of this article.

(g) Without the prior approval of the commission, a person may not, except in an intracorporate transaction, consummate a transaction described in subsection (a) that causes more than fifty-one percent (51%) of the then outstanding shares of the energy company's stock entitled to vote generally in the election of the energy company's directors to be beneficially held, directly or indirectly, immediately after the transaction by persons that are different from the persons that beneficially held, directly or indirectly, the shares of the energy company's stock immediately before the transaction.

(h) The commission shall approve a transaction subject to this section unless the commission finds after notice and hearing that

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a preponderance of the evidence of record in the hearing demonstrates that the energy utility affected by the transaction will lack the financial, managerial, or technical capabilities to provide adequate and reliable retail energy service.

(i) The commission shall enter an order either approving or disapproving a transaction subject to this section not later than one hundred twenty (120) days after the date a person files an application with the commission for approval of the proposed transaction. If the commission fails to issue an order within the one hundred twenty (120) day period allowed the commission under this subsection, the transaction shall be considered approved by operation of law as of the first day following the one hundred twenty (120) day period described in this subsection. If the transaction is approved by the commission or considered approved under this subsection, the commission may not take action in any state or federal administrative or judicial proceeding to oppose the transaction.

(j) If commission approval of a transaction involving a:

(1) merger, consolidation, reorganization, or union involving an energy company; or

(2) tender offer or contract for the purchase, acquisition, assignment, or transfer of stock of an energy company;

is not required under this section, commission approval of the transaction is not required under any other provision of this title.

(k) Nothing in this chapter:

(1) prevents the holding of an energy company's stock lawfully acquired before July 1, 2002; or

(2) prohibits a merger, consolidation, reorganization, or union involving an energy company if the transaction was lawfully initiated before July 1, 2002.

SECTION 8. IC 8-1-2-109 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 109. (a) This section does not apply to:

(1) a public utility that is subject to section 109.1 of this chapter; or

(2) a corporation organized or operating under IC 8-1-13.

(b) A public utility that violates this chapter or fails to perform any duty enjoined upon it for which a penalty is not otherwise provided commits a Class B infraction.

SECTION 9. IC 8-1-2-109.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 109.1. (a) This section does not apply to any of the

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following:

(1) The provision of commercial mobile service (as defined in 47 U.S.C. 332).

(2) A corporation covered by IC 8-1-13 or IC 8-1-17.

(3) A telephone company (as defined in section 88 of this chapter) that is certified for local exchange telephone service and that serves less than fifty thousand (50,000) local exchange access lines.

(4) A municipality or political subdivision.

(b) This section does not apply when a public utility's violation or failure to comply under subsection (e) is caused by circumstances beyond the control of the public utility, including any of the following:

(1) Customer provided equipment.

(2) A negligent act or omission of a customer.

(3) An emergency situation.

(4) An unavoidable casualty.

(5) An act of God.

(c) As used in this section, "public utility" includes a department of public utilities created under IC 8-1-11.1.

(d) A public utility and every officer of a public utility shall comply with every order or rule of the commission made under the authority of this chapter.

(e) Except as otherwise provided in this chapter, if the commission finds after notice and hearing that a public utility has violated this chapter or failed after due notice to comply with:

(1) a standard of service established by commission rule; or

(2) a rate or service requirement of a final and unappealable order of the commission;

the commission may order the public utility to pay a civil penalty of not more than five thousand dollars (\$5,000) for each violation or failure to comply.

(f) Notwithstanding subsection (e), if the commission finds after notice and hearing that the public utility's violation or failure to comply demonstrates, by a continuing pattern of conduct, a disregard by the public utility of its obligation to remedy the violation or failure to comply found under subsection (e), the commission may impose an additional civil penalty of not more than ten thousand dollars (\$10,000) for each violation or failure to comply.

(g) The commission shall consider the following when determining the appropriateness of the imposition or amount of a

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1 **civil penalty:**

- 2 (1) The size of the public utility.  
 3 (2) The gravity of the violation or failure to comply.  
 4 (3) The good faith of the public utility in attempting to remedy  
 5 the violation or failure to comply or achieve compliance after  
 6 receiving notification of the violation or failure.  
 7 (4) The effect of the civil penalty on the public utility's  
 8 financial ability to provide adequate and reliable service.  
 9 (5) If the public utility is a nonprofit company:  
 10 (A) the effect of the penalty on the company's members  
 11 and their capitalization of the company; and  
 12 (B) whether the act or omission causing the violation or  
 13 failure to comply had been approved or requested by the  
 14 company's members.

15 **In the order imposing the civil penalty, the commission shall make**  
 16 **specific findings with respect to the factors described in**  
 17 **subdivisions (1) through (5).**

18 **(h) A public utility may not be subject to both a civil penalty**  
 19 **under this section and a penalty agreed to a commission approved**  
 20 **settlement agreement for the same violation or failure to comply.**  
 21 **If the commission has approved a settlement agreement that**  
 22 **includes penalties or remedies for noncompliance with specific**  
 23 **provisions of the settlement agreement, the penalties provided in**  
 24 **this section do not apply to those instances of noncompliance**  
 25 **during the life of the settlement agreement.**

26 **(i) Notwithstanding section 112 of this chapter, the civil**  
 27 **penalties provided for in this section for each violation or failure**  
 28 **to comply by a public utility may not be multiplied or increased**  
 29 **because of the number of customers affected or the length of time**  
 30 **service is affected. Only one (1) violation or failure to comply per**  
 31 **day may be attributed to a public utility as a result of a particular**  
 32 **condition, system outage, storm, act, omission, event, decision, or**  
 33 **other cause occurring on that day.**

34 **SECTION 10. IC 8-1-2-115 IS AMENDED TO READ AS**  
 35 **FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 115. (a) The**  
 36 **commission shall inquire into any neglect or violation of the statutes of**  
 37 **this state or the ordinances of any city or town by any public utility**  
 38 **doing business therein, or by the officers, agents, or employees thereof,**  
 39 **or by any person operating the plant of any public utility, and shall**  
 40 **have the power, and it shall be its the commission's duty to enforce the**  
 41 **provisions of this chapter, as well as all other laws, relating to public**  
 42 **utilities. Any forfeiture or penalty provided in this chapter shall be**



recovered, and suit therein shall be brought in the name of the state of Indiana ~~in the circuit or superior court where the public utility has its principal place of business:~~ **by the attorney general in a court having jurisdiction.** Complaint for the collection of any such forfeiture may be made by the commission or any member thereof, and, when so made, the action so commenced shall be prosecuted by the **attorney general.** ~~counsel.~~

**(b) If the attorney general prevails in an action under this section, the attorney general may recover any of the following:**

**(1) The amount of a judgment, a forfeiture, a civil penalty, or another penalty.**

**(2) The attorney general's reasonable costs in maintaining the action.**

SECTION 11. IC 8-1-2-128 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 128. (a) This section does not apply to any of the following:**

**(1) A corporation operating under IC 8-1-13.**

**(2) A nonprofit corporation most of whose members are operating under IC 8-1-13.**

**(3) A joint agency created and operating under IC 8-1-2.2.**

**(b) As used in this section, "merchant power plant" means a facility in Indiana used for the:**

**(1) production of electric energy; and**

**(2) sale of electric energy exclusively on the wholesale market to other public utilities, energy service providers, or power marketers in or outside Indiana.**

**(c) A merchant power plant is subject to the jurisdiction of the commission.**

**(d) For any petition filed by a merchant power plant under IC 8-1-2.5 or IC 8-1-8.5, the commission may consider the following:**

**(1) Location of the merchant power plant.**

**(2) Need for the electricity to be generated or other benefits to be provided by the merchant power plant.**

**(3) Effect of the merchant power plant on electric, water, and natural gas suppliers and customers.**

**(4) Financing for the merchant power plant.**

**(5) Other factors the commission considers relevant.**

SECTION 12. IC 8-1-2-129 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 129. (a) Not later than seven (7) days after**



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1 receiving a petition for the approval of a merchant power plant (as  
2 defined in section 128(b) of this chapter), the commission shall  
3 notify, by certified mail, the appropriate county or municipal  
4 agency having zoning jurisdiction in the area where a merchant  
5 power plant is proposed.

6 (b) The agency having zoning jurisdiction may, not later than  
7 thirty (30) days after receiving notification from the commission  
8 under subsection (a), forward to the commission the following  
9 information concerning the proposed location and effect of the  
10 merchant power plant:

11 (1) Land use plans as identified in a comprehensive plan or  
12 applicable local zoning ordinances.

13 (2) Other issues considered relevant to local officials.

14 In its consideration of the petition for approval of the merchant  
15 power plant, the commission shall consider any information  
16 provided to it under this subsection.

17 SECTION 13. IC 8-1-3-6 IS AMENDED TO READ AS FOLLOWS  
18 [EFFECTIVE UPON PASSAGE]: Sec. 6. All rules, practices,  
19 installations, and services prescribed, approved, or required by the  
20 commission shall be in force and shall be prima facie reasonable unless  
21 finally found otherwise by the court of appeals or by the supreme court  
22 if the cause is transferred to and decided by that court. ~~However,~~  
23 **Except as otherwise allowed under IC 8-1-2-61(c) or**  
24 **IC 8-1-13-38(c),** pending the appeal as in this chapter provided, any  
25 municipally owned utility, public utility, rural electric membership  
26 corporation, or rural telephone cooperative association whose rate or  
27 rates are affected by the decision, ruling, or order appealed from shall  
28 have the right to collect the rate or rates as fixed by said decision,  
29 ruling, or order, or the former rate, whichever is higher in amount, and  
30 such municipally owned utility, public utility, corporation, or  
31 association shall refund the difference to each consumer or contract  
32 customer if such difference be not sustained upon appeal. However,  
33 pending the appeal as in this chapter provided, the court of appeals,  
34 upon good cause shown by verified petition, may authorize and permit,  
35 but not require, any common or contract carrier whose rate or rates are  
36 affected by the decision, ruling, or order appealed from, to collect the  
37 rate or rates published and in effect or the rate or rates sought to be put  
38 into effect, immediately prior to the commencement of the proceeding  
39 before the commission, subject to such provisions for bond or escrow  
40 as the court shall provide to protect the interest of all parties of record  
41 before the court.

42 SECTION 14. IC 8-1-3-7 IS AMENDED TO READ AS FOLLOWS



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[EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Upon determination of the appeal, the court shall have jurisdiction to affirm or set aside such decision, ruling, or order of the commission, in whole or in part, or remand the proceeding to the commission with instructions. No evidence beyond that contained in the record of the proceedings before the commission shall be considered or received by the court, except that in cases where issues of confiscation or of constitutional right are involved, the court, on its own motion or verified petition of a party, may order such additional evidence as it deems necessary for the determination of such issues to be taken before the commission and to be received at the hearing before the commission in such manner and upon such terms and conditions as the court shall order.

(b) If a new hearing is ordered under subsection (a), the commission is not required to receive any evidence as to facts which were in existence at the time of the prior commission hearing or hearings, except upon a showing, either to the court in the first instance, or the commission, upon the hearing, that:

- (1) the evidence was not available for presentation to the commission prior to the entry of its final decision, ruling, or order, or prior to the determination of the commission upon the petition for rehearing, if a petition for rehearing was filed; and
- (2) due diligence was exercised by the party offering the evidence to procure and present the evidence to the commission prior to the entry of its final decision, ruling, or order, or its determination upon the petition for rehearing, if any was filed.

(c) Whenever the court shall order additional evidence to be taken the commission shall promptly hear and report the evidence to the court so that the proof may be brought as nearly as reasonably possible down to the date of its report to the court. The commission may, after hearing such evidence, modify its findings as to facts and its original decision, ruling, or order, and it shall file with the court the amended decision or orders and any modified or new findings.

(d) If the commission modifies or amends its original decision or orders, the appealing party or any other party aggrieved by the modified or amended decision or order may file with the court, within the time allowed by the court, a specification of any errors of law claimed to have been made by the commission in the modified decision or orders. A specification of errors shall be considered by the court in addition to the errors of law asserted in the assignment or assignments of error.

(e) The supreme court and the court of appeals, as the case may be, have jurisdiction, upon application of the commission or any party, to order or enjoin temporarily or permanently the enforcement of any

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determination, ruling, or order of the commission made in the cause.

(f) The supreme court and the court of appeals, as the case may be, also have jurisdiction upon application of a public utility to issue temporary injunctions protecting the utility in the collection of rates determined by the court to be nonconfiscatory during the pendency of the proceeding and until nonconfiscatory rates are fixed by the commission if existing rates are finally determined to be confiscatory, with appropriate provisions as to bonds and refunds. **A public utility that provides electric or gas service is not required to petition the court under this subsection in order to collect the rates allowed under IC 8-1-2-61(c) during the pendency of the proceeding. A corporation that provides electric service under IC 8-1-13 is not required to petition the court under this subsection in order to collect the rates allowed under IC 8-1-13-38(c) during the pendency of the proceeding.**

SECTION 15. IC 8-1-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. Nothing in this chapter contained shall be construed to affect the duty or power of:

(1) the commission to commence ~~and prosecute~~ enforcement proceedings in its own name; or

(2) **the attorney general to prosecute enforcement proceedings** in the name of the state of Indiana in the circuit or superior courts of this state;

pursuant to the provisions of **IC 8-1-2-115, IC 8-1-13-41.2, or** other statutes, except insofar as such proceedings may interfere with the jurisdiction of the court of appeals or supreme court in a cause then pending on appeal.

SECTION 16. IC 8-1-13-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 30. (a) No change shall be made in any schedule, including schedules of joint rates, except upon thirty (30) days notice to the commission, and approval by the commission, and all changes shall be plainly indicated upon existing schedules or by filing new schedules in place of existing schedules thirty (30) days before the time the same are to take effect. The commission may prescribe a shorter time within which a change may be made. A corporation may not file a request for a general increase in its basic rates and charges within fifteen (15) months after the filing date of its most recent request for a general increase in its basic rates and charges, except that the commission may order a more timely increase if:

(1) the requested increase relates to a different type of utility service;



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1 (2) the commission finds that the corporation's financial integrity  
2 or service reliability is threatened; or

3 (3) the increase is based on:

4 (A) a rate structure previously approved by the commission; or

5 (B) orders of federal courts or federal regulatory agencies  
6 having jurisdiction over the corporation.

7 The phrase "general increase in basic rates and charges" does not  
8 include changes in rates related solely to the cost of fuel or purchased  
9 electricity or adjustments in accordance with tracking provisions  
10 approved by the commission.

11 (b) No schedule of rates, tolls, and charges of a corporation which  
12 includes or authorizes any changes in charges based upon costs is  
13 effective without the approval of the commission. Before the  
14 commission approves any changes in the schedule of rates, tolls, and  
15 charges of a corporation that generates and sells electricity, based upon  
16 the cost of fuel to generate electricity or upon ~~the cost of fuel included~~  
17 ~~in the cost of purchased electricity~~, the utility consumer counselor shall  
18 examine the books and records of the public generating corporation to  
19 determine the cost of fuel **and the cost of purchased electricity** upon  
20 which the proposed charges are based. In addition, before a fuel **and**  
21 **purchased electricity** cost charge becomes effective, the commission  
22 shall hold a summary hearing on the sole issue of the fuel **and**  
23 **purchased electricity** charge. The utility consumer counselor shall  
24 conduct a review and make a report to the commission within twenty  
25 (20) days after the corporation's request for the fuel **and purchased**  
26 **electricity** cost charge is filed. The commission shall hold the summary  
27 hearing and issue its order within twenty (20) days after it receives the  
28 utility consumer counselor's report. The provisions of this chapter  
29 concerning the filing, printing, and changing of rate schedules and the  
30 time required for giving notice of hearing and requiring publication of  
31 notice do not apply to the fuel **and purchased electricity** cost charge  
32 or the summary hearing.

33 (c) Regardless of the pendency of any request for a fuel **and**  
34 **purchased electricity** cost charge by any corporation, the books and  
35 records pertaining to cost of fuel **and the cost of purchased electricity**  
36 of all corporations that generate electricity shall be examined by the  
37 utility consumer counselor not less often than quarterly, and the books  
38 and records of all electric nongenerating corporations shall be  
39 examined by the utility consumer counselor not less often than  
40 annually. The utility consumer counselor shall provide the commission  
41 with a report as to the examination of the books and records within a  
42 reasonable time following the examination. The utility consumer

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counselor may, if appropriate, request of the commission a reduction or elimination of the fuel **and purchased electricity** cost charge. Upon such request, the commission shall immediately hold a hearing in the manner provided in this chapter.

(d) An electric generating corporation may apply for a change in its fuel **and purchased electricity** charge not more often than each three (3) months. When the application is filed the petitioning corporation shall show to the commission its cost of fuel to generate electricity and ~~the cost of fuel included in~~ the cost of purchased electricity, for the period between its last order from the commission approving fuel **and purchased electricity** costs in its basic rates and the latest month for which actual fuel costs **and actual purchased electricity costs** are available. The petitioning corporation shall also estimate its average fuel **and purchased electricity** costs for the three (3) calendar months subsequent to the expiration of the twenty (20) day period allowed the commission in subsection (b). The commission shall conduct a formal hearing solely on the fuel **and purchased electricity** cost charge requested in the petition subject to the notice requirements of IC 8-1-1-8 and shall grant the electric corporation the **fuel cost portion of the requested fuel and purchased electricity cost charge or the purchased electricity cost part of the requested fuel and purchased electricity cost charge, or both**, if it finds that:

(1) with respect to the:

- (A) **fuel cost part of the requested fuel and purchased electricity cost charge**, the electric corporation has made every reasonable effort to acquire fuel and generate ~~or purchase power or both~~ so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible; and
- (B) **purchased electricity part of the requested fuel and purchased electricity cost charge, the electric corporation's costs of purchased electricity were reasonably incurred by the electric corporation to provide adequate and reliable electric service, including the maintenance of an adequate level of electricity reserves;**

(2) the actual increases in fuel cost through the latest month for which the actual fuel costs are available since the last order of the commission approving basic rates and charges of the electric corporation have not been offset by actual decreases in other operating expenses;

(3) the corporation's estimate of its prospective average fuel **and purchased electricity** costs for each of the three (3) calendar months ~~are~~ **is** reasonable after taking into consideration:



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(A) the actual fuel **and purchased electricity** costs experienced by the corporation during the latest three (3) calendar months for which actual fuel **and purchased electricity** costs are available; and

(B) the estimated fuel **and purchased electricity** costs for the same latest three (3) calendar months for which actual fuel **and purchased electricity** costs are available.

(e) Should the commission at any time determine that an emergency exists that could result in an abnormal change in fuel costs, it may, in order to protect the public from the adverse effects of such change, suspend the provisions of subsection (d) as to the corporation affected by the emergency and initiate such procedures as may be necessary to protect both the public and the corporation from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(f) Any change in the fuel **and purchased electricity** cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the corporation in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the corporation. However, the corporation may file the change as a separate amendment to its rate schedules with a reasonable reference in the amendment that the charge is applicable to all of its filed rate schedules.

(g) As used in this section, "cost of fuel" or "fuel costs" includes the cost of fuel used by a corporation to generate electricity.

(h) As used in this section, "cost of purchased electricity" or "purchased electricity costs" includes a corporation's costs directly associated with purchased electricity transactions, including demand charges, capacity charges, reservation charges, option payments, energy charges, take or pay charges, indexed charges, transmission costs, and costs associated with managing the risks of the wholesale power market.

SECTION 17. IC 8-1-13-38 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 38. (a) Any corporation may make complaint as to any matter affecting its own rates or service. The corporation shall publish a notice of the filing of the petition or complaint in a newspaper of general circulation published in any county in which the corporation renders service. An order affecting rates or service may be entered by the commission without a formal public hearing, if the corporation has obtained written consent to obtain an order affecting its rates from the commission without a formal hearing from any agency of the federal government

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with which the corporation has outstanding evidence of indebtedness to the federal government. The commission may, however, on its own motion require a formal public hearing, and shall, upon a motion filed by the utility consumer counselor, by any public or municipal corporation, by ten (10) individuals, firms, corporations, limited liability companies, or associations, or by ten (10) complainants of any or all of these classes, hold a formal public hearing with respect to any petition or complaint.

(b) In any general rate proceeding under subsection (a) which requires a public hearing and in which an increase in revenues is sought which exceeds the sum of two million five hundred thousand dollars (\$2,500,000), the commission shall conduct at least one (1) public hearing in the largest municipality located within the corporation's service area.

**(c) If the commission fails to issue an order determining a request by a corporation for an increase in the corporation's basic rates and charges for electric service within six (6) months after the date the corporation files its case in chief in support of its request, the corporation may implement the corporation's proposed rate changes beginning on the first day of the first billing month following the expiration of the six (6) month period allowed the commission under this subsection by filing notice with the commission. After the commission issues an order making a determination on the corporation's request, the corporation may continue to collect the rates implemented by the corporation under this subsection pending a petition for rehearing or an appeal of the commission's order under IC 8-1-3. Notwithstanding any other provision of this article, upon the final determination on the corporation's request, including the determination on any petition for rehearing or appeal under IC 8-1-3, the corporation shall refund any difference between:**

**(1) the revenues generated by the rates implemented by the corporation under this subsection; and**

**(2) the revenues that would have been generated by the higher of:**

**(A) the rates authorized in the final determination of the proceedings; or**

**(B) the rates of the corporation that were in effect immediately before the rates implemented by the corporation under this subsection;**

**for the period beginning on the effective date of the rates implemented by the corporation under this subsection and ending**

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on the effective date of the rates authorized in the final determination of the proceedings. The corporation shall issue any refunds required under this subsection not later than sixty (60) days after the effective date of the rates authorized in the final determination of the proceedings. The refunds must include interest accrued from the date of the final determination at the interest rate set forth in IC 24-4.6-1-102.

SECTION 18. IC 8-1-13-41.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 41.1. (a) The authority granted to the commission under this section is in addition to the commission's authority to act under section 41 of this chapter.

(b) This section does not apply when a corporation's violation or failure to comply under subsection (d) is caused by circumstances beyond the control of the corporation, including any of the following:

- (1) Customer provided equipment.
- (2) A negligent act or omission of a customer.
- (3) An emergency situation.
- (4) An unavoidable casualty.
- (5) An act of God.

(c) A corporation subject to the commission's jurisdiction under this chapter and every officer of the corporation shall comply with every order or rule of the commission made under the authority of this chapter.

(d) Except as otherwise provided in this chapter, if the commission finds after notice and hearing that a corporation has violated this chapter or failed after due notice to comply with:

- (1) a standard of service established by commission rule; or
- (2) a rate or service requirement of a final and unappealable order of the commission;

the commission may order the corporation to pay a civil penalty of not more than five thousand dollars (\$5,000) for each violation or failure to comply.

(e) Notwithstanding subsection (d), if the commission finds after notice and hearing that the corporation's violation or failure to comply demonstrates, by a continuing pattern of conduct, a disregard by the corporation of its obligation to remedy the violation or failure to comply found under subsection (d), the commission may impose an additional civil penalty of not more than ten thousand dollars (\$10,000) for each violation or failure to comply.



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(f) The commission shall consider the following when determining the appropriateness of the imposition or amount of a civil penalty:

- (1) The size of the corporation.
- (2) The gravity of the violation or failure to comply.
- (3) The good faith of the corporation in attempting to remedy the violation or failure to comply or achieve compliance after receiving notification of the violation or failure.
- (4) The effect of the civil penalty on the corporation's members and their capitalization of the corporation.
- (5) Whether the act or omission causing the violation or failure to comply had been approved or requested by the corporation's members.

In the order imposing the civil penalty, the commission shall make specific findings with respect to the factors described in subdivisions (1) through (5).

(g) A corporation may not be subject to both a civil penalty under this section and a penalty agreed to in a commission approved settlement agreement for the same violation or failure to comply. If the commission has approved a settlement agreement that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, the penalties provided in this section do not apply to those instances of noncompliance during the life of the settlement agreement.

(h) Notwithstanding IC 8-1-2-112, the civil penalties provided for in this section for each violation or failure to comply by a corporation may not be multiplied or increased because of the number of customers affected or the length of time service is affected. Only one violation or failure to comply per day may be attributed to a corporation as a result of a particular condition, system outage, storm, act, omission, event, decision, or other cause occurring on that day.

SECTION 19. IC 8-1-13-41.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 41.2. The commission shall inquire into any neglect or violation of the statutes of Indiana or the ordinances of any city or town by any corporation organized under this chapter and doing business in the state, city, or town, whichever applies, by the officers, agents, or employees of the corporation, or by any person operating the plant of any corporation, and the commission shall have the power and duty to enforce the provisions of this chapter, as well as all other laws,**



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relating to corporations regulated under this chapter. Any forfeiture or penalty provided in this chapter shall be recovered and any suit related to the forfeiture or penalty shall be brought in the name of the state of Indiana by the attorney general in a court that has jurisdiction. Complaint for the collection of any forfeiture or penalty may be made by the commission or any commission member and, when made, the action commenced shall be prosecuted by the attorney general.

SECTION 20. IC 8-1-27-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "environmental compliance plan" means a plan developed by a public utility to comply in whole or in part with the requirements of the ~~Clean Air Act Amendments of 1990~~ **state or federal environmental laws**.

SECTION 21. IC 8-1-27-5.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.7. As used in this chapter, "state or federal environmental laws" means:

(1) any state or federal law, rule, regulation, or order; or  
 (2) any adjudication, settlement, or consent decree in any state or federal court or administrative proceeding interpreting or applying a state or federal law, rule, regulation, or order;  
 relating to the protection, monitoring, preservation, remediation, or restoration of human health, the environment, or natural resources from air, wastewater, solid waste, or thermal pollution.

SECTION 22. IC 8-1-27-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) A public utility that has at least one (1) generating unit affected by ~~Section 404 (Phase I) or Section 405 (Phase II) of the Clean Air Act Amendments of 1990~~ **state or federal environmental laws** may voluntarily submit **to the commission for the commission's review and approval under this chapter** a verified environmental compliance plan that sets forth the manner in which the public utility intends to comply with the requirements of the ~~Clean Air Act Amendments of 1990~~ **to the commission for the commission's review and approval under this chapter**. **state or federal environmental laws addressed by the plan.**

(b) An environmental compliance plan described in subsection (a) must include any information that the commission may reasonably require. The commission shall require a plan described in subsection (a) to include at least the following information:

(1) A description of the requirements of the ~~Clean Air Act Amendments of 1990~~ **state or federal environmental laws**



1 **addressed by the plan and** applicable to each **facility or**  
 2 generating unit owned or operated by the public utility.

3 (2) A description of the measures the public utility proposes to  
 4 implement to comply with the requirements.

5 (3) The schedule under which the public utility proposes to  
 6 implement the measures.

7 (4) An estimate of the cost of implementing each of the measures  
 8 proposed by the public utility.

9 (5) An analysis of the comparative estimated costs of meeting the  
 10 applicable requirements of the ~~Clean Air Act Amendments of~~  
 11 ~~1990~~ **state or federal environmental laws addressed by the**  
 12 **plan** through the measures proposed by the public utility and  
 13 other alternative compliance measures considered by the public  
 14 utility.

15 (6) For all compliance plans submitted to the commission after  
 16 July 1, 1993, if an environmental compliance plan proposes a  
 17 change of fuel type from the fuel type consumed in the public  
 18 utility's generating units and that change of fuel type would result  
 19 in the displacement or diminished use of Indiana coal from the  
 20 quantity of Indiana coal consumed by the public utility during the  
 21 calendar year 1990, or an average of the quantity of Indiana coal  
 22 consumed by the utility in calendar years 1990, 1991, and 1992,  
 23 whichever is submitted by the utility in the plan, the public utility  
 24 shall submit the following as part of the environmental  
 25 compliance plan:

26 (A) An analysis of the following:

27 (i) The economic and employment effects of the proposed  
 28 change of fuel type on the regions of Indiana in which the  
 29 mining of coal provides employment, and on the service  
 30 territory of the public utility.

31 (ii) The effects of the proposed modification on the  
 32 preservation of the mining of Indiana coal as a viable source  
 33 of fuel.

34 The analyses required under this clause must include a  
 35 comparison of the effects likely to result from the alternative  
 36 compliance measures identified under subdivision (5).

37 (B) Information describing the availability, the reliability, the  
 38 current costs, and the projected future costs of the fuel type  
 39 proposed for use in connection with the environmental  
 40 compliance plan.

41 SECTION 23. IC 8-1-27-8 IS AMENDED TO READ AS  
 42 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. The commission



shall issue an order approving an environmental compliance plan if the commission:

(1) finds that the environmental compliance plan:

(A) is reasonably designed to meet or exceed the applicable requirements of the ~~Clean Air Act Amendments of 1990~~; **state or federal environmental laws addressed by the plan**;

(B) constitutes a reasonable and least cost strategy over the life of the investment consistent with providing reliable, efficient, and economical electrical service; **and**

(C) is in the public interest; and

~~(D) either:~~

(i) ~~provides for continued or increased use of Indiana coal in the coal-consuming electric generating units owned or operated by the public utility and affected by the Clean Air Act Amendments of 1990; or~~

(ii) ~~if the plan does not provide for continued or increased use of Indiana coal, such nonprovision is justified by economic considerations including the effects in the regions of Indiana in which the mining of coal provides employment and in the service territory of the public utility; and~~

(2) approves the cost and schedule estimate for developing and implementing the environmental compliance plan.

SECTION 24. IC 8-1-27-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. If a public utility:

(1) chooses to; or

(2) because of action by a federal or state government environmental agency, is required to;

modify a part of an environmental compliance plan that has previously been approved by the commission to comply with the requirements of the ~~Clean Air Act~~, **state or federal environmental laws addressed by the plan**, the public utility shall submit a modified environmental compliance plan to the commission for the commission's review. The conflict provisions of section 10 of this chapter apply to a modified environmental compliance plan submitted under this section.

SECTION 25. IC 8-1-27-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. If the commission finds that an environmental compliance plan or a modified environmental compliance plan approved by the commission under this chapter exceeds the applicable requirements of the ~~Clean Air Act Amendments of 1990~~ **state or federal environmental laws addressed by the plan** by means of early or over compliance, the commission



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1 shall, in the order approving the plan, determine the manner and timing  
2 of the applicable ratemaking and regulatory treatment of any emission  
3 credits or other additional benefits expected to result from the early or  
4 over compliance.

5 SECTION 26. THE FOLLOWING ARE REPEALED [EFFECTIVE  
6 UPON PASSAGE]: IC 8-1-27-1; IC 8-1-27-2.

7 SECTION 27. [EFFECTIVE UPON PASSAGE] (a) **IC 8-1-2-42, as**  
8 **amended by this act, applies to a petition for a fuel and purchased**  
9 **electricity cost charge or gas cost charge made by a public or**  
10 **municipally owned electric generating utility after March 31, 2002.**

11 (b) **IC 8-1-13-30, as amended by this act, applies to a petition for**  
12 **a fuel and purchased electricity cost charge made by a rural**  
13 **electric membership corporation after March 31, 2002.**

14 (c) **This SECTION expires January 1, 2003.**

15 SECTION 28. [EFFECTIVE UPON PASSAGE] (a) **IC 8-1-2-61, as**  
16 **amended by this act, applies to a petition for an increase in basic**  
17 **rates and charges made by a public utility after March 31, 2002.**

18 (b) **IC 8-1-13-38, as amended by this act, applies to a petition for**  
19 **an increase in basic rates and charges made by a rural electric**  
20 **membership corporation after March 31, 2002.**

21 (c) **This SECTION expires January 1, 2003.**

22 SECTION 29. **An emergency is declared for this act.**

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